

Laurence M. Rosen, Esq. (SBN 219683)
THE ROSEN LAW FIRM, P.A.
355 South Grand Avenue, Suite 2450
Los Angeles, CA 90071
Telephone: (213) 785-2610
Facsimile: (213) 226-4684
Email: lrosen@rosenlegal.com

Counsel for Plaintiff Sabatino

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH SABATINO, Individually and
on behalf of all others similarly situated,

Plaintiff,

V.

THOMAS S. ROONEY, JR.,
ALEXANDER J. BUEHLER, JOEL
GAY, and ENERGY RECOVERY, INC.

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS

JURY TRIAL DEMANDED

Plaintiff Joseph Sabatino, individually and on behalf of all other persons similarly situated, by his undersigned attorneys, alleges in this Complaint the following upon knowledge with respect to his own acts, and upon facts obtained through an investigation conducted by his counsel, which included, inter alia: (a) review and analysis of relevant filings made by Energy Recovery, Inc. (“Energy Recovery” or the “Company”) with the United States Securities and Exchange Commission (the “SEC”); (b) review and analysis of Defendants’ public documents, conference calls and press releases; (c) review and analysis of securities analysts’

1 reports and advisories concerning the Company; and (d) information readily
2 obtainable on the Internet.

3 Plaintiff believes that further substantial evidentiary support will exist for the
4 allegations set forth herein after a reasonable opportunity for discovery. Most of the
5 facts supporting the allegations contained herein are known only to Defendants or are
6 exclusively within their control.

7 **NATURE OF THE ACTION**

8 1. This is a federal securities class action on behalf of all persons and
9 entities, other than Defendants, who purchased the common stock of Energy
10 Recovery during the period March 14, 2012 through January 13, 2015, inclusive (the
11 “Class Period”), seeking to recover compensable damages caused by Defendants’
12 violations of federal securities laws and pursue remedies under the Securities
13 Exchange Act of 1934 (the “Exchange Act”).

14 2. Energy Recovery designs, develops, and manufactures energy recovery
15 devices that transform untapped energy into reusable energy from industrial fluid
16 flows and pressure cycles. The company markets its products directly to customers
17 through its sales organization, as well as through authorized independent sales agents
18 in the United States and internationally.

19 3. Throughout the Class Period, Defendants made false and/or misleading
20 statements, and failed to disclose deficiencies in its internal controls. Specifically,
21 during the Class Period, Defendants made false and/or misleading statements and/or
22 failed to disclose that its Chief Sales Officer/Senior Vice President of Sales had
23 breached a duty of trust and engaged in conduct which created a conflict of interest
24 with the Company.

25 4. When the market learned of this breach, the Company’s stock price
26 plunged, damaging investors.

JURISDICTION AND VENUE

5. The claims asserted herein arise under and pursuant to Sections 10(b)
 2 and 20(a) of the Exchange Act, (15 U.S.C. §78j (b) and 78t (a)), and Rule 10b-5
 3 promulgated thereunder (17 C.F.R. §240.10b-5).
 4

6. This Court has jurisdiction over the subject matter of this action pursuant
 5 to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. § 1331.
 6

7. Venue is proper in this Judicial District pursuant to §27 of the Exchange
 8 Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b) as the Company conducts business in
 9 this district.

10. In connection with the acts, conduct and other wrongs alleged in this
 11 Complaint, Defendants, directly or indirectly, used the means and instrumentalities of
 12 interstate commerce, including but not limited to, the United States mails, interstate
 13 telephone communications and the facilities of the national securities exchange.

PARTIES

15. Plaintiff Joseph Sabatino, as set forth in the accompanying certification,
 16 incorporated by reference herein, purchased Energy Recovery common stock at
 17 artificially inflated prices during the Class Period and has been damaged thereby.

18. Defendant Energy Recovery is a Delaware corporation with
 19 headquarters in San Leandro, California. It is an industry leader in capturing reusable
 20 energy from industrial fluid flows and pressure cycles. During the Class Period the
 21 Company's stock was traded on the NASDAQ Stock Market ("NASDAQ") under the
 22 symbol "ERII."

23. Defendant Thomas S. Rooney, Jr. ("Rooney") has been the President and
 24 Chief Executive Officer of the Company, as well as a Director of the Company at all
 25 relevant times.

26. Defendant Alexander J. Buehler ("Buehler") was the Chief Financial
 27 Officer of the Company at all relevant until his abrupt resignation on June 25, 2014.
 28

1 13. Defendant Joel Gay (“Gay”) has been the Chief Financial Officer of the
2 Company since June 27, 2014.

3 14. Defendants Rooney and Buehler are collectively referred to hereinafter
4 as the “Individual Defendants.”

5 15. Each of the Individual Defendants:

6 (a) directly participated in the management of the Company;

7 (b) was directly involved in the day-to-day operations of the
8 Company at the highest levels;

9 (c) was privy to confidential proprietary information concerning the
10 Company and its business and operations;

11 (d) was involved in drafting, producing, reviewing and/or
12 disseminating the false and misleading statements and information alleged
13 herein;

14 (e) was aware of or recklessly disregarded the fact that the false and
15 misleading statements were being issued concerning the Company; and

16 (f) approved or ratified these statements in violation of the federal
17 securities laws.

18 16. As officers, directors, and controlling persons of a publicly-held
19 company whose common stock is and was registered with the SEC pursuant to the
20 Exchange Act, and was traded on NASDAQ and governed by the provisions of the
21 federal securities laws, the Individual Defendants each had a duty to disseminate
22 accurate and truthful information promptly with respect to the Company’s financial
23 condition and to correct any previously-issued statements that had become materially
24 misleading or untrue to allow the market price of the Company’s publicly-traded
25 stock to reflect truthful and accurate information.

26 17. Energy Recovery is liable for the acts of the Individual Defendants and
27 its employees under the doctrine of respondeat superior and common law principles
28

of agency as all of the wrongful acts complained of herein were carried out within the scope of their employment with authorization.

18. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to Energy Recovery under respondeat superior and agency principles.

SUBSTANTIVE ALLEGATIONS

19. The class period starts on March 14, 2012, when the Company filed a materially false and misleading Form 10-K for the fiscal year ended December 31, 2011 (the “2011 10-K”) with the SEC, which misstated that the Company’s internal control over financial reporting was effective.

20. The 2011 10-K was signed by Defendants Rooney and Buehler. Attached to the 2011 10-K were the Sarbanes-Oxley Act of 2002 (“SOX”) certifications signed by Defendants Rooney and Buehler falsely attesting to the accuracy of the 2011 10-K.

21. On May 9, 2012, the Company filed with the SEC a materially false and misleading Form 10-Q for the quarterly period ended March 31, 2012 (the “2012 First Quarter 10-Q”), which failed to disclose deficiencies in the Company’s internal control over financial reporting.

22. The 2012 First Quarter 10-Q was signed by Defendants Rooney and Buehler. Attached to the 2012 First Quarter 10-Q were the SOX certifications signed by Defendants Rooney and Buehler falsely attesting to the accuracy of the 2012 First Quarter 10-Q.

23. On August 7, 2012, the Company filed with the SEC a materially false and misleading Form 10-Q for the quarterly period ended June 30, 2012 (the “2012 Second Quarter 10-Q”), which failed to disclose deficiencies in the Company’s internal control over financial reporting.

24. The 2012 Second Quarter 10-Q was signed by Defendants Rooney and Buehler. Attached to the 2012 Second Quarter 10-Q were the SOX certifications

1 signed by Defendants Rooney and Buehler falsely attesting to the accuracy of the
2 2012 Second Quarter 10-Q.

3 25. On November 8, 2012, the Company filed with the SEC a materially
4 false and misleading Form 10-Q for the quarterly period ended September 30, 2012
5 (the “2012 Third Quarter 10-Q”), which failed to disclose deficiencies in the
6 Company’s internal control over financial reporting.

7 26. The 2012 Third Quarter 10-Q was signed by Defendants Rooney and
8 Buehler. Attached to the 2012 Third Quarter 10-Q were the SOX certifications signed
9 by Defendants Rooney and Buehler falsely attesting to the accuracy of the 2012 Third
10 Quarter 10-Q.

11 27. On March 12, 2013, the Company filed a materially false and misleading
12 Form 10-K for the fiscal year ended December 31, 2012 (the “2012 10-K”) with the
13 SEC, which misstated that the Company’s internal control over financial reporting
14 was effective.

15 28. The 2012 10-K was signed by Defendants Rooney and Buehler.
16 Attached to the 2012 10-K were the SOX certifications signed by Defendants Rooney
17 and Buehler falsely attesting to the accuracy of the 2012 10-K.

18 29. On May 9, 2013, the Company filed with the SEC a materially false and
19 misleading Form 10-Q for the quarterly period ended March 31, 2013 (the “2013
20 First Quarter 10-Q”), which failed to disclose deficiencies in the Company’s internal
21 control over financial reporting.

22 30. The 2013 First Quarter 10-Q was signed by Defendants Rooney and
23 Buehler. Attached to the 2013 First Quarter 10-Q were the SOX certifications signed
24 by Defendants Rooney and Buehler falsely attesting to the accuracy of the 2013 First
25 Quarter 10-Q.

26 31. On August 6, 2013, the Company filed with the SEC a materially false
27 and misleading Form 10-Q for the quarterly period ended June 30, 2013 (the “2013
28

1 Second Quarter 10-Q”), which failed to disclose deficiencies in the Company’s
2 internal control over financial reporting.

3 32. The 2013 Second Quarter 10-Q was signed by Defendants Rooney and
4 Buehler. Attached to the 2013 Second Quarter 10-Q were the SOX certifications
5 signed by Defendants Rooney and Buehler falsely attesting to the accuracy of the
6 2013 Second Quarter 10-Q.

7 33. On November 7, 2013, the Company filed with the SEC a materially
8 false and misleading Form 10-Q for the quarterly period ended September 30, 2013
9 (the “2013 Third Quarter 10-Q”), which failed to disclose deficiencies in the
10 Company’s internal control over financial reporting.

11 34. The 2013 Third Quarter 10-Q was signed by Defendants Rooney and
12 Buehler. Attached to the 2013 Third Quarter 10-Q were the SOX certifications signed
13 by Defendants Rooney and Buehler falsely attesting to the accuracy of the 2013 Third
14 Quarter 10-Q.

15 35. On March 11, 2014, the Company filed a materially false and misleading
16 Form 10-K for the fiscal year ended December 31, 2013 (the “2013 10-K”) with the
17 SEC, which misstated that the Company’s internal control over financial reporting
18 was effective.

19 36. The 2013 10-K was signed by Defendants Rooney and Buehler.
20 Attached to the 2013 10-K were the SOX certifications signed by Defendants Rooney
21 and Buehler falsely attesting to the accuracy of the 2013 10-K.

22 37. On May 8, 2014, the Company filed with the SEC a materially false and
23 misleading Form 10-Q for the quarterly period ended March 31, 2014 (the “2014
24 First Quarter 10-Q”), which failed to disclose deficiencies in the Company’s internal
25 control over financial reporting.

26 38. The 2014 First Quarter 10-Q was signed by Defendants Rooney and
27 Buehler. Attached to the 2014 First Quarter 10-Q were the SOX certifications signed
28

1 by Defendants Rooney and Buehler falsely attesting to the accuracy of the 2014 First
 2 Quarter 10-Q.

3 39. On June 25, 2014, the Company announced the sudden resignation of
 4 Defendant Buehler, effective that day.

5 40. On August 7, 2014, the Company filed with the SEC a materially false
 6 and misleading Form 10-Q for the quarterly period ended June 30, 2014 (the “2014
 7 Second Quarter 10-Q”), which failed to disclose deficiencies in the Company’s
 8 internal control over financial reporting.

9 41. The 2014 Second Quarter 10-Q was signed by Defendants Rooney and
 10 Gay. Attached to the 2014 Second Quarter 10-Q were the SOX certifications signed
 11 by Defendants Rooney and Gay falsely attesting to the accuracy of the 2014 Second
 12 Quarter 10-Q.

13 42. On November 10, 2014, the Company filed with the SEC a materially
 14 false and misleading Form 10-Q for the quarterly period ended September 30, 2014
 15 (the “2014 Third Quarter 10-Q”), which failed to disclose deficiencies in the
 16 Company’s internal control over financial reporting.

17 43. The 2014 Third Quarter 10-Q was signed by Defendants Rooney and
 18 Gay. Attached to the 2014 Third Quarter 10-Q were the SOX certifications signed by
 19 Defendants Rooney and Gay falsely attesting to the accuracy of the 2014 Third
 20 Quarter 10-Q.

The Truth Begins to Emerge

21 44. On September 10, 2014, the Company issued a press release and filed as
 22 a Form 8-K with the SEC on the following day announcing the search for a new
 23 Chief Sales Officer. It states in relevant parts:

24 25 Energy Recovery Inc. (Nasdaq:ERII), the leader in capturing reusable
 26 energy from industrial fluid flows and pressure cycles, today
 27 announced that ***effective immediately, it has terminated the***
 28 ***employment relationship with its Senior Vice President of Sales,***
Borja Sanchez-Blanco, for cause. The Company recently became

1 *aware that Mr. Blanco had breached a duty of trust and engaged in
2 conduct which created a conflict of interest with the Company over
3 the course of several years, not in keeping with the Company's
standards for ethics and integrity.*

4 (emphasis added)

5 45. On this news, shares of the Company fell \$0.15 per share or over 3%
6 from its previous closing price to close at \$4.03 per share on September 11, 2014,
7 damaging investors.

8 46. On January 13, 2015, the Company issued a press release and filed a
9 Form 8-K with the SEC announcing the abrupt resignation of Defendant Rooney as
10 its Chief Executive Officer.

11 47. On this news, shares of the Company fell \$0.54 per share or over 12%
12 from its previous closing price to close at \$3.90 per share on January 14, 2015,
13 damaging investors.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

15 48. Plaintiff brings this action as a class action pursuant to Federal Rules of
16 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all persons who
17 purchased the common stock of Energy Recovery during the Class Period and who
18 were damaged thereby. Excluded from the Class are Defendants, the officers and
19 directors of the Company at all relevant times, members of their immediate families
20 and their legal representatives, heirs, successors or assigns and any entity in which
21 Defendants have or had a controlling interest.

22 49. The members of the Class are so numerous that joinder of all members is
23 impracticable. Throughout the Class Period, Energy Recovery's common stock was
24 actively traded on NASDAQ. While the exact number of Class members is unknown
25 to Plaintiff at this time and can only be ascertained through appropriate discovery,
26 Plaintiff believes that there are at least hundreds of members in the proposed Class.
27 Members of the Class may be identified from records maintained by Energy
28

1 Recovery or its transfer agent and may be notified of the pendency of this action by
2 mail, using a form of notice customarily used in securities class actions.

3 50. Plaintiff's claims are typical of the claims of the members of the Class,
4 as all members of the Class are similarly affected by Defendants' wrongful conduct
5 in violation of federal law that is complained of herein.

6 51. Plaintiff will fairly and adequately protect the interests of the members
7 of the Class and has retained counsel competent and experienced in class and
8 securities litigation.

9 52. Common questions of law and fact exist as to all members of the Class
10 and predominate over any questions solely affecting individual members of the Class.
11 Among the questions of law and fact common to the Class are:

12 a. whether the federal securities laws were violated by Defendants'
13 acts as alleged herein;

14 b. whether the misstatements and omissions alleged herein were
15 made with scienter;

16 c. whether statements made by Defendants to the investing public
17 during the Class Period misrepresented material facts about the business and
18 operations of Energy Recovery; and

19 d. to what extent the members of the Class have sustained damages,
20 and the proper measure of damages.

21 53. A class action is superior to all other available methods for the fair and
22 efficient adjudication of this controversy since joinder of all members is
23 impracticable. Furthermore, as the damages suffered by individual Class members
24 may be relatively small, the expense and burden of individual litigation make it
25 impossible for members of the Class to redress individually the wrongs done to them.
26 There will be no difficulty in the management of this action as a class action.

27
28

1 **Applicability of Presumption of Reliance:**
 2 **Fraud on the Market Doctrine**

3 54. At all relevant times, the market for Energy Recovery common stock
 4 was an efficient market for the following reasons, among others:

5 a. Energy Recovery's stock met the requirements for listing, and was
 6 listed and actively traded on NASDAQ, a highly efficient and automated
 7 market;

8 b. During the class period, on average, over hundreds of thousands
 9 of shares of Energy Recovery stock were traded on a weekly basis,
 10 demonstrating a very active and broad market for Energy Recovery and
 11 permitting a very strong presumption of an efficient market;

12 c. Energy Recovery regularly communicated with public investors
 13 via established market communication mechanisms, including through regular
 14 disseminations of press releases on the national circuits of major newswire
 15 services and through other wide-ranging public disclosures, such as
 16 communications with the financial press and other similar reporting services;

17 d. Energy Recovery was followed by several securities analysts
 18 employed by a major brokerage firm who wrote reports that were distributed to
 19 the sales force and certain customers of his/her brokerage firm during the Class
 20 Period. Each of these reports was publicly available and entered the public
 21 marketplace;

22 e. Numerous FINRA member firms were active market-makers in
 23 Energy Recovery stock at all times during the Class Period; and

24 f. Unexpected material news about Energy Recovery was rapidly
 25 reflected and incorporated into the Company's stock price during the Class
 26 Period.

27 55. As a result of the foregoing, the market for Energy Recovery's common
 28 stock promptly digested current information regarding Energy Recovery from all

1 publicly available sources and reflected such information Energy Recovery's stock
 2 price. Under these circumstances, all purchasers of Energy Recovery's common stock
 3 during the Class Period suffered similar injury through their purchase of Energy
 4 Recovery's common stock at artificially inflated prices, and a presumption of reliance
 5 applies.

6 **FIRST CLAIM**

7 **Violation of Section 10(b) of The Exchange Act
 and Rule 10b-5 Promulgated Thereunder Against All Defendants**

8 56. Plaintiff repeats and realleges each and every allegation contained above
 9 as if fully set forth herein.

10 57. During the Class Period, Defendants carried out a plan, scheme and
 11 course of conduct which was intended to and, throughout the Class Period, did: (1)
 12 deceive the investing public, including Plaintiff and other Class members, as alleged
 13 herein; and (2) cause Plaintiff and other members of the Class to purchase Energy
 14 Recovery's securities at artificially inflated prices. In furtherance of this unlawful
 15 scheme, plan and course of conduct, each of the Defendants took the actions set forth
 16 herein.

17 58. Defendants: (a) employed devices, schemes, and artifices to defraud; (b)
 18 made untrue statements of material fact and/or omitted to state material facts
 19 necessary to make the statements not misleading; and (c) engaged in acts, practices,
 20 and a course of business that operated as a fraud and deceit upon the purchasers of the
 21 Company's securities in an effort to maintain artificially high market prices for
 22 Energy Recovery's securities in violation of Section 10(b) of the Exchange Act and
 23 Rule 10b-5 promulgated thereunder. All Defendants are sued either as primary
 24 participants in the wrongful and illegal conduct charged herein or as controlling
 25 persons as alleged below.

26 59. Defendants, individually and in concert, directly and indirectly, by the
 27 use, means or instrumentalities of interstate commerce and/or of the mails, engaged
 28

1 and participated in a continuous course of conduct to conceal adverse material
2 information about the business, operations and future prospects of Energy Recovery
3 as specified herein.

4 60. These Defendants employed devices, schemes, and artifices to defraud
5 while in possession of material adverse non-public information, and engaged in acts,
6 practices, and a course of conduct as alleged herein in an effort to assure investors of
7 Energy Recovery's value and performance and continued substantial growth, which
8 included the making of, or participation in the making of, untrue statements of
9 material facts and omitting to state material facts necessary in order to make the
10 statements made about Energy Recovery and its business operations and future
11 prospects in the light of the circumstances under which they were made, not
12 misleading, as set forth more particularly herein, and engaged in transactions,
13 practices and a course of business that operated as a fraud and deceit upon the
14 purchasers of Energy Recovery's securities during the Class Period.

15 61. Each of the Individual Defendants' primary liability, and controlling
16 person liability, arises from the following facts: (1) the Individual Defendants were
17 high-level executives, directors, and/or agents at the Company during the Class
18 Period and members of the Company's management team or had control thereof; (2)
19 each of these Defendants, by virtue of his responsibilities and activities as a senior
20 officer and/or director of the Company, was privy to and participated in the creation,
21 development and reporting of the Company's financial condition; (3) each of these
22 Defendants enjoyed significant personal contact and familiarity with the other
23 Defendants and was advised of and had access to other members of the Company's
24 management team, internal reports and other data and information about the
25 Company's finances, operations, and sales at all relevant times; and (4) each of these
26 Defendants was aware of the Company's dissemination of information to the
27 investing public which they knew or recklessly disregarded was materially false and
28 misleading.

1 62. Defendants had actual knowledge of the misrepresentations and
2 omissions of material facts set forth herein, or acted with reckless disregard for the
3 truth in that they failed to ascertain and to disclose such facts, even though such facts
4 were available to them. Such Defendants' material misrepresentations and/or
5 omissions were done knowingly or recklessly and for the purpose and effect of
6 concealing Energy Recovery's operating condition and future business prospects
7 from the investing public and supporting the artificially inflated price of its securities.
8 As demonstrated by Defendants' overstatements and misstatements of the Company's
9 financial condition throughout the Class Period, Defendants, if they did not have
10 actual knowledge of the misrepresentations and omissions alleged, were reckless in
11 failing to obtain such knowledge by deliberately refraining from taking those steps
12 necessary to discover whether those statements were false or misleading.

13 63. As a result of the dissemination of the materially false and misleading
14 information and failure to disclose material facts, as set forth above, the market price
15 of Energy Recovery's securities was artificially inflated during the Class Period. In
16 ignorance of the fact that market prices of Energy Recovery's publicly-traded
17 securities were artificially inflated, and relying directly or indirectly on the false and
18 misleading statements made by Defendants, or upon the integrity of the market in
19 which the common stock trades, and/or on the absence of material adverse
20 information that was known to or recklessly disregarded by Defendants but not
21 disclosed in public statements by Defendants during the Class Period, Plaintiff and
22 the other members of the Class acquired Energy Recovery's securities during the
23 Class Period at artificially high prices and were or will be damaged thereby.

24 64. At the time of said misrepresentations and omissions, Plaintiff and other
25 members of the Class were ignorant of their falsity, and believed them to be true. Had
26 Plaintiff and the other members of the Class and the marketplace known the truth
27 regarding Energy Recovery's financial results, which was not disclosed by
28 Defendants, Plaintiff and other members of the Class would not have purchased or

1 otherwise acquired their Energy Recovery's securities, or, if they had acquired such
2 securities during the Class Period, they would not have done so at the artificially
3 inflated prices that they paid.

4 65. By virtue of the foregoing, Defendants have violated Section 10(b) of
5 the Exchange Act, and Rule 10b-5 promulgated thereunder.

6 66. As a direct and proximate result of Defendants' wrongful conduct,
7 Plaintiff and the other members of the Class suffered damages in connection with
8 their respective purchases and sales of the Company's securities during the Class
9 Period.

10 67. This action was filed within two years of discovery of the fraud and
11 within five years of each plaintiff's purchases of securities giving rise to the cause of
12 action.

SECOND CLAIM
Violation of Section 20(a) of
The Exchange Act Against the Individual Defendants

15 68. Plaintiff repeats and realleges each and every allegation contained above
16 as if fully set forth herein.

17 69. The Individual Defendants acted as controlling persons of Energy
18 Recovery within the meaning of Section 20(a) of the Exchange Act as alleged herein.
19 By virtue of their high-level positions, agency, ownership and contractual rights, and
20 participation in and/or awareness of the Company's operations and/or intimate
21 knowledge of the false financial statements filed by the Company with the SEC and
22 disseminated to the investing public, the Individual Defendants had the power to
23 influence and control, and did influence and control, directly or indirectly, the
24 decision-making of the Company, including the content and dissemination of the
25 various statements that Plaintiff contends are false and misleading. The Individual
26 Defendants were provided with or had unlimited access to copies of the Company's
27 reports, press releases, public filings and other statements alleged by Plaintiff to have

1 been misleading prior to and/or shortly after these statements were issued and had the
2 ability to prevent the issuance of the statements or to cause the statements to be
3 corrected.

4 70. In particular, each of these Defendants had direct and supervisory
5 involvement in the day-to-day operations of the Company and, therefore, is presumed
6 to have had the power to control or influence the particular transactions giving rise to
7 the securities violations as alleged herein, and exercised the same.

8 71. As set forth above, Energy Recovery and the Individual Defendants each
9 violated Section 10(b), and Rule 10b-5 promulgated thereunder, by their acts and
10 omissions as alleged in this Complaint.

11 72. By virtue of their positions as controlling persons, the Individual
12 Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and
13 proximate result of Defendants' wrongful conduct, Plaintiff and other members of the
14 Class suffered damages in connection with their purchases of the Company's
15 securities during the Class Period.

16 73. This action was filed within two years of discovery of the fraud and
17 within five years of each Plaintiff's purchases of securities giving rise to the cause of
18 action.

19 **WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

20 a. Determining that this action is a proper class action, designating Plaintiff
21 as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the
22 Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;

23 b. Awarding compensatory damages in favor of Plaintiff and the other
24 Class members against all Defendants, jointly and severally, for all damages
25 sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial,
26 including interest thereon;

27 c. Awarding Plaintiff and the Class their reasonable costs and expenses
28 incurred in this action, including counsel fees and expert fees; and

1 d. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

3 Plaintiff hereby demands a trial by jury.

Dated: January 20, 2015

Respectfully submitted,

THE ROSEN LAW FIRM, P.A.

/s/ Laurence Rosen
Laurence M. Rosen, Esq. (SBN 219683)
355 S. Grand Avenue, Suite 2450
Los Angeles, CA 90071
Telephone: (213) 785-2610
Facsimile: (213) 226-4684
Email: lrosen@rosenlegal.com

Counsel for Plaintiff Sabatino

Certification and Authorization of Named Plaintiff Pursuant to Federal Securities Laws

The individual or institution listed below (the "Plaintiff") authorizes and, upon execution of the accompanying retainer agreement by The Rosen Law Firm P.A., retains The Rosen Law Firm P.A. to file an action under the federal securities laws to recover damages and to seek other relief against Energy Recovery, Inc.. The Rosen Law Firm P.A. will prosecute the action on a contingent fee basis and will advance all costs and expenses. The Energy Recovery, Inc.. Retention Agreement provided to the Plaintiff is incorporated by reference, upon execution by The Rosen Law Firm P.A.

First name: Joseph

Middle initial:

Last name: Sabatino

Address:

City:

State:

Zip:

Country:

Facsimile:

Phone:

Email:



REDACTED

Plaintiff certifies that:

1. Plaintiff has reviewed the complaint and authorized its filing.
2. Plaintiff did not acquire the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in this private action or any other litigation under the federal securities laws.
3. Plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.
4. Plaintiff represents and warrants that he/she/it is fully authorized to enter into and execute this certification.
5. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond the Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.
6. Plaintiff has made no transaction(s) during the Class Period in the debt or equity securities that are the subject of this action except those set forth below:

Acquisitions:

Type of Security	Buy Date	# of Shares	Price per Share
Common Stock	2/19/2014	400	4.59

7. I have not served as a representative party on behalf of a class under the federal security laws during the last three years, except if detailed below. []

I declare under penalty of perjury, under the laws of the United States, that the information entered is accurate:

YES

Certification for Joseph Sabatino (cont.)

By clicking on the button below, I intend to sign and execute
this agreement and retain the Rosen Law Firm, P.A. to
proceed on Plaintiff's behalf, on a contingent fee basis.

YES

Signed pursuant to California Civil Code Section 1633.1, et seq. - and the Uniform Electronic
Transactions Act as adopted by the various states and territories of the United States.

Date of signing: 01/15/2015



A handwritten signature in black ink, appearing to read "Joseph Sabatino". The signature is written in a cursive style with a horizontal line underneath it.